V. CONSUMER ACCESS TO QUALITY LONG-TERM CARE

Frail, ill residents of a health facility depend on that facility for shelter and for health services. For the safety of residents, a sudden, unexpected closure of their facility for financial reasons would require immediate action. Either DHS must arrange for satisfactory new owners and managers, or it must arrange timely transfer of residents to alternative nursing homes. Under either circumstance, DHS would supervise the situation on an around-the-clock basis until satisfactory arrangements are made for all residents.

If a nursing home loses or fails to maintain its liability insurance coverage, it places the facility at risk of bankruptcy or financial insolvency should civil litigation be filed against it.

The responsibility of government in the LTC market is to ensure that high quality services are provided by facilities, through a system of licensing and regulatory oversight and enforcement. In the event that a regulated facility closes, government is responsible for ensuring the rights of the resident continue to be protected.

Nine million Californians will be over the age of 60 by 2020. What continuum of care will be in place two decades from now? Will there be sufficient caregivers to support the available options? What information will assist Californians in their health decisions? Liability insurance for LTC providers is only one of a myriad of issues affecting the State's systems.

Aging baby boomers will continue to make LTC a potential growth market, if organizations determine the possibility for success in the market outweighs the potential risks. Access to and availability of LTC alternatives will depend upon consumer need, adequate funding, and qualified providers.

PROTECTION OF RESIDENT'S RIGHTS IN NURSING HOMES

Risk of Facility Closure

Nursing homes that cannot find a liability insurance carrier, or cannot afford the premium, may choose to operate without liability insurance ("going bare"). A facility that goes bare faces the greatest financial risk.

A number of State requirements have been enacted to alert DHS when a facility is experiencing a financial risk that could result in closure (see Table 5, Aging with Dignity, page 45). The goal of DHS is to avoid closing a facility whenever possible, for the sake of residents' health and safety.

The relationship between the **licensee** and the property owner will sometimes determine whether a change of ownership is possible rather than a closure. In some situations, DHS L&C staff is able to actively assist a facility to identify an appropriate new owner to enable residents to remain where they are. In enforcement actions, the situation may be so dangerous and unsafe for residents that closure is the only alternative.

If a facility intends to close, the facility must submit a relocation plan to the DHS L&C district office 45 days prior to the scheduled closure. If residents must be transferred to other facilities, the residents always must be given written notice 30 days in advance of the transfer, and the facility must assess residents for placement. DHS tracks the location of all transfer residents and conducts follow-up visits to determine any negative effect upon individual residents. Whenever a SNF is being closed, DHS always monitors the process very carefully. For example, DHS might conduct onsite supervision of the entire resident assessment and transfer process should it have concerns about health and safety of residents.

In June 2001, DHS experienced its first situation in which the licensee "abandoned" three facilities for financial reasons, without the prior notification process required in statute. In that situation, DHS' involvement was immediate. Using AB 1731 provisions, DHS hired a temporary manager to operate the facilities until new qualified providers could be licensed and assume operations. An appropriate new owner was found for two of the nursing homes, but could not be found for the third facility. DHS employees monitored activities in all the facilities during this time and ensured the safe and orderly transfer of residents was completed in the facility that closed.

The process for DHS to make permanent arrangements for residents of the three facilities required three months at a cost of over $2 million. DHS was able to pay for the emergency costs in this instance, using monies from the **State Citation Penalty Account.** This account contains money collected from state civil penalties imposed upon facilities. Money in the account must be used for the protection of the health or property of residents.

Although the financial failure and closures described here did not result from lack of liability insurance, any facility that "goes bare" faces a significant financial risk. With over 1400 nursing homes across the state, account funds are not sufficient to handle an unlimited number of such emergencies. Once the account is depleted, money from the State General Fund would be required.

Arkansas recently enacted legislation aimed at reducing liability insurance costs for nursing homes. When asked to describe the benefits of the legislation, the chief counsel for the state health department stated: "DHS [Arkansas' health department] does not want to be in a position of taking over failed nursing homes." [1]

PROMOTION OF LONG-TERM CARE ALTERNATIVES

California is home to an array of LTC programs. A December 2000, Medi-Cal Policy Institute report, "The Role of Medi-Cal in California's LTC System," documented more than 74 public LTC programs and related services housed in six state agencies, with expenditures of at least $13.5 billion in 1998. Within those programs, what constitutes a LTC facility also can vary depending on who uses the term and for what purpose.[2]

Nursing Homes

Many of the larger nursing facility and assisted living companies are publicly traded on the stock market. The nursing facility industry currently composes the largest part of LTC business, with national spending in 2000 of $92.2 billion.[3]

The steady trend in nursing home ownership has been towards corporate, freestanding, for-profit facilities.

The steady trend in nursing home ownership has been towards corporate, freestanding, for-profit facilities. Approximately 66 percent of the nursing home beds in the United States are owned by for-profit entities, and in California, the number is over 80 percent. Of freestanding nursing homes in the state, over 87 percent are for-profit.

Large chains constitute a significant portion of the nursing home industry. CMS identified ten nursing facility companies as owning 18.46 percent of the total beds nationwide.[4] Many of these same chains also own a significant number of SNF beds in California.

Nursing homes are both a type of housing unit and provider of health care. Corporate investors and owners, financial and business communities, view facilities as "properties" since they are a type of living arrangement. Financial transactions are decided based on such factors as stock prices, capitalization rates, investment potential, occupancy rates, profitability ratios and risk. From a business perspective, as long as the numbers demonstrate potential for profit, a future continuum of available long-term residential care appears viable.

In 1999, however, the business perspective for nursing homes did not appear viable. Five of the ten top chains by bed count in the country filed for bankruptcy within a relatively short period. Because of the large number of beds these companies represented nationwide, federal lawmakers were quick to schedule hearings to determine the potential impact on the industry. At a September 5, 2000, U.S. Senate hearing, "Nursing Home Bankruptcies: What Caused Them?" witnesses described many factors contributing to the bankruptcies. A number of the factors related to implementation of more restrictive Medicare rates, but another factor was identified as "litigation and related insurance costs."[5]

Many nursing home providers blamed changes in the PPS for their financial difficulties. Congress responded by adopting temporary add-ons for some of the per diem reimbursement SNFs had lost under PPS. These add-ons sunset in September 2002 (see Table 5, page 45, BBRA). On January 17, 2002, the federal **Medicare Payment Advisory Commission (MedPAC)** expressed its intention to recommend that those add-ons end in September. Stock prices for publicly traded nursing facilities fell 12.9 percent on that day. Wall Street analysts expect that the availability of capital for expansion to serve the aging population is dependent upon federal policy decisions related to these add-ons.[6]

In March 2002, *Briefings on Long-Term Care Regulations,* a monthly periodical, reported:

> Many states are considering cutting Medicaid payments to cope with a growing financial crisis. For nursing homes, many of which rely on Medicaid to pay for nearly two-thirds of their residents' care, this could be
> a disastrous move. Due to declining revenues because of the recession and soaring Medicaid costs, many states are trimming Medicaid...[7]

The March 2002 issue of *The Senior Care Investor* voiced similar uncertainty:

> While we know what happened last year, it is unclear what will happen in 2002 because so much uncertainty remains in the market. One by one, states are talking about Medicaid reimbursement cuts while Washington debates what to do about some 'temporary' Medicare rate increases that are set to expire this October. [8]

Assisted Living Facilities

California has over 6,000 **Residential Care Facilities for the Elderly (RCFE)** with a total capacity of almost 140,000 beds. Eighty-five percent of these RCFEs have fewer than 16 beds. Large, for-profit facilities account for only a portion of the supply.[9]

According to the provider organizations that represent the assisted living market, liability insurance premiums and litigation are increasing for assisted living facilities. Private pay is the source of payment for most RCFEs, but many residents use a combination of the federal Supplemental Security Income (SSI) program with State Supplemental Payments (SSP) for rent payments. Major cost increases in liability insurance premiums will be reflected in the rates assisted living facilities charge to consumers.

Anne Burns Johnson, President and Chief Executive Officer, California Association of Homes and Services for the Aging (CAHSA), represents both nursing homes and other senior homes and services. In her recent testimony to the Joint Informational Hearing of the Senate Health and Human Services Committee and the Senate Subcommittee on Aging and Long Term Care, she said:

> The insurance industry's inability (or unwillingness) to separate out affordable housing raises the cost of liability coverage for all facilities, no matter how healthy, ambulatory, or vigorous the residents may be. As a result, not just nursing homes, but the entire spectrum of long term care is threatened by the skyrocketing cost of liability coverage.
>
> Huge increases in liability premiums jeopardize long-standing community based programs provided by our members. In the face of rising costs, members are struggling with decisions to continue services that have long been part of their mission and tradition; programs like the Brown Bag food for the poor. The daily Call-a-Senior Program for isolated elderly; free information and referral programs for families and seniors. All are at risk due to higher insurance costs.[10]

Implications

Health care in the United States is a business enterprise, and consideration must be given to balancing the viability of the business and the implications this has on access to care. At the same time, policy solutions should never ignore the fact that high quality care is good business. All stakeholders agree on the importance of providing high quality care to the elderly. Modifications to the current system to resolve immediate problems must be more than "quick fixes" and ensure that access to better care will also be an outcome of any change.

[1] Michael Rowett, "Panel Rejects Bill Shielding Nursing Homes," in *Arkansas Democrat-Gazette,* April 4, 2002.
[2] Harrington, op.cit, p 1.
[3] Scully, op.cit. p.6
[4] Ibid.
[5] Senator Charles Grassley, "Grassley: Bankrupt Nursing Home Chains Must Justify Funding Requests (Press Release)," September 5, 2000.
[6] Scully, op.cit., p. 3.
[7] "Medicaid Funding Takes Hit as Loophole Closes," *Briefings on Long-Term Care Regulations*, OPUS Communications, Vol. 10 No.3, March 2002, p. 2. www.snfinfo.com.
[8] "Acquisition Prices Stabilize in 2001, But Future Is Cloudy," *The Senior Care Investor,* Irving Levin Associates, Inc., Vol. 12, Issue 3, March 2002, p. 2.
[9] The Quality Initiative, *A Primer on Residential Care Facilities for the Elderly,* San Francisco: California HealthCare Foundation, January 2002, p. 7.
[10] Johnson, op.cit., p. 3.